

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P..... of 2001 (SS)

Ram Pal Singh & others vs. State of Uttaranchal and others

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 14.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. of 2003 (SS)

Ram Pal Singh and 44 others Petitioners

Versus

1. State of Uttaranchal
2. Engineer in Chief Public Works Department
Uttaranchal
3. The Supreintending Engineer, P.W.D. Udham
Singh Nagar.
3. The Executive Engineer, Provincial Division
P.W.D. Rudrapur.
4. Executive Engineer P.W.D. Khatima,
District Udham Singh Nagar

Respondents

Sri S.S. Yadav, Advocate for the petitioners
Standing Counsel for the respondents.

Dated:-14.11.2003

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

The petitioners have filed the present writ petition for the issue of a writ order or direction in the nature of mandamus directing the respondent no. 2, 3 & 4 to treat the petitioners as regular employees of the department and pay them salary with all the benefits available to the regular employees of the department in the corresponding cadre.

Brief facts giving rise to the present writ petition are that the petitioners were appointed on daily wages on the posts of Meth and Beldar in the Public Works Department and they were made workcharge employees between 1998 to 2001.

That State of U.P. has issued a G.O. on 15.10.1997 in respect of regularisation of the work charge employees of the department who are working continuously for the last several years. According to G.O. work-charge employees who have rendered continuous satisfactory service of 5 years or more than 5 years till 31st March 1997 shall be regularised on the post held by them. The relevant clause of the G.O. is mentioned below:

कार्य प्रभारित कर्मियों जिनकी निरन्तर सन्तोषजनक सेवायें विभाग में दिनांक 31.3.1997 को पॉच वर्ष या इससे अधिक हो गयी हों एवं अब तक निरन्तर कार्यरत हो तथा जो वर्कचार्ज पर नियुक्त कर प्रतिबन्ध हेतु जारी कार्मिक विभाग के शासनादेश सं० 1085/का-1991 दिनांकित 29.8.1991 के पूर्व से नियुक्त हो को उपलब्ध नियमित पदों/रिक्तियों स्थाई एवं अस्थायी दोनों प्रकृति के पद सम्मिलित हैं की सीमा तक नियमित कार्य प्रभारित अधिष्ठान में रखने हेतु पात्र माना जाय । इस नियमित कार्य प्रभारित कर्मचारियों को राज्य कर्मचारियों की भाँति सभी सुविधायें अनुमन्य हों ।

The petitioners have stated that they have completed more than 5 years of service up to 31st of March 1997 and they are liable to be regularised.

The petitioners have also stated that in the year 1999 State of U.P. issued a G.O. by which a ceiling was imposed on the dearness

allowance and emoluments of the petitioners and the said G.O. is still in force.

The petitioners have also relied upon the judgment of Apex Court in Writ Petition (Civil) No. 140 of 1989 *Raj Narain vs. State of U.P.* The Apex Court has observed as under:

“We have carefully perused the proposed scheme in regard to work charged employees and we felt that clause ‘D’ which talks of regularization as per vacancies arising in regular posts on the establishment, a modification is necessary, in that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work charges employees the cadre strength should be increased by a certain percentage of the work charged employees working over a period of time that may be fixed by the Government so that the pace of regularisation is accelerated and is not the same as obtaining in the past, For example, if 100 work charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to the extent. An exercise of review in the cadre strength from year to year, therefore, becomes necessary because while on the one side the financial difficulties of the State have to be kept in view, on the other side the

welfare of the workman who have served the State on different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impress the State Government that if work charged employees have been on the establishment for long period that State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to the reasonably good number of work charged employees who have been associated with State Department for long periods.”

The petitioners have also placed reliance on the judgment of Prayag Narain and others vs. State of U.P. and others (1998) 3 UPLBEC 21251. In this case also the petitioners were employed in P.W.D. and were working on the posts of Beldar/Meth. All of them were initially engaged on daily wages and later on engaged on master roll therefore, they had prayed that the respondents be directed to pay equal pay for equal work.

The petitioners have referred the judgment of Apex Court in the case State of Haryana and others vs. Piara Singh and others AIR 1992 SC 2130. It has been held as under:

“So far as the work charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job”

The petitioners have stated that they are working with the respondent Department since long and they are entitled to be regularised in view of the judgment of Apex Court in the case of State of Haryana vs. Piara Singh (Supra). It reads as under:

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the Rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

“So far as the work charged employees and casual labour are concerned, the efforts must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the government of Haryana (contained in its letter dated 6.4.1990 referred to herein before) both in relation to work charge employees as well as casual labour.

So far as ceiling imposed on the salary of the petitioner is concerned, reliance was placed on the orders passed by the State of U.P. dated 1.1.2000 by which clause 668 of Work Charge Establishment Condition of Employment Rules was abolished.

The respondents have already been directed vide this Court's order dated 15.11.2003 passed in Writ Petition No. 368 of 2003 (SS)

Khem Singh and others vs. State of Uttaranchal to reconsider the same in view of the U.P. Government order dated 1.1.2000.

In the mean time respondents are directed to pay salary to the petitioners ignoring the ceiling prescribed in view of the order of Division Bench of this Court dated 10.5.2002 in Writ Petition No. 392 (SB) of 2002 to the following effect:

“Notice on behalf of the opposite parties has been accepted by the Chief Standing Counsel, who prays for and allowed four weeks time to file counter affidavit, list thereafter.

In the mean time, the opposite parties shall make payment of salary to the petitioners from the current month ignoring the ceiling prescribed.”

The writ petition is disposed of accordingly. No order as to costs.

(Rajesh Tandon, J.)

14.11.2003
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